

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT, NEW YORK.

77-7064

MADAN GAUTAM,

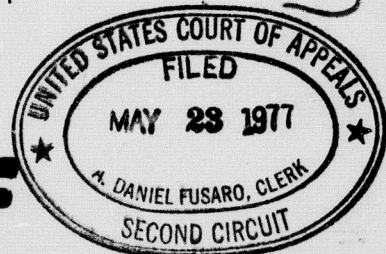
Plaintiff-Appellant,

V.

First National City Bank
(CITIBANK), et al.,
Defendant-Appellee

Civil Appeal

77-7064



BRIEF

RESPECTFULLY,

The subject of the above-captioned pro-se action, instituted under Title VII, and also under sec. 1981, of the U.S.C.A. of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., is an alleged employment discrimination, unlawfully based on race, color and national origin. Plaintiff, despite this great upset, strongly believes in this great republic, hopes to get justice. Plaintiff appearing pro-se, exhausted all the administrative remedies, to get justice at lower courts, and is uncounseled, has absolutely no legal background. The District Court, dismissed his complaint, summarily, on the ground that the complaint was not filed, within the time period limit. Plaintiff disagrees, with the lower court's decision. The lower court erred in granting summary judgment for the defendants, on the following basis.

1.The disputable facts,and evidences of crucial importance in determining the question of whether the court should exercise its equitable powers,as well as initiate its own inquiry on an uncounselled plaintiff's behalf.

2.On the matter of continuing discrimination.

3.Timliness requirement(Three hundred days,statute of limitation), for filing the complaint,with the(EEOC)Equal Employment Opportunity Commission,(hereafter,EEOC).

Plaintiff,will argue on the above mentioned points,one by one respectively.

The action of the lower court in granting the summary judgement for the defendant's,d denied the plaintiff an opportunity to present evidence on the important and unsettled questions.

"Where inferences to be drawn from underlying facts are fairly in dispute summary judgement is inappropriate, see,. S.E.C. V.American Berryllium & Oil Corp. D.C.N.Y. 1969 303 F.Supp.912.

Where a genuine dispute exist,defendant's motion for summary judgement should be denied.See Veeder Root Inc. Vs. Hanrietta,D.C.

Conn 1943 , 52 F.Supp 918.

In particular, the plaintiff was denied the opportunity, to show that an ex parte decision was made, at the Appeal Board of the New York State Human Rights Commission. Plaintiff was told to stay home and present written arguments. Plaintiff relied in good faith on the belief that the New York State Human Rights Commission would proceed in a manner which would afford him, an equal opportunity, under the U.S. Constitution. See § 1981 of the 42 U.S.C. The Appeal Board did not notify him of the date of the trial or hearing, thus violated the plaintiff's constitutional rights, under equal protection and hence denied the due process. During the hearing, the defendants conspired to present false and totally incorrect information, and decision was made in an ex parte manner.

The summary judgement, is a drastic remedy, which should never have been granted where appeared doubts about existence of triable issues of material fact. See United Buckingham freight Line V. Riss & Co., D.C. Colo. 1965, 241 F.Supp 861.

Plaintiff Argues, that the summary judgement be reversed on the court ability to hear evidence w.r.t. a discriminatory practice which existed, prior to the effective date of the act.

Plaintiff for all practical purposes is litigating in the capacity of a defendant sec 1347 F.R.CIV.P. 12 99 4(A). District Court cannot dismiss a complaint for failure to state a claim without protecting the claimant's rights to be heard by granting a hearing on the merits of the claim. See Hanover V. Superior Court, C.A. 9th, 1962 307 F.2d 796. Rule 12(f) permits the court to act on its own initiative, although there is at least one reported D.C. Court decision § 1381 Rule 12 F.R.CIV.P. 41 says hearing on factual issues appropriate allegation that consideration of race--- effects discrimination may not be stricken, since a matter of such importance should await full hearings on the merits. Bradley V. School Bd. of City of Richmond, C.A. 4th, 1965, 345 F.2d 310, 325, vacated on other grounds 1965, 86 S.Ct. 224 382 U.S. 103, 15 L.Ed.2d 187. Contrary to the statement of the lower court, the Court of Appeal, should resort to equitable principles such as those suggested in Reeb V. Economic Opportunity Atlanta, Inc., 516 F.2d 924 (5th Cir. 1975).

Coexisting remedies; under the constitution and vast authority vested with the District Court, it should have exercised the power, invoking Civil Rights under 42 U.S.C. § 1981 (Sec. 1 of Civil Rights Act of 1866) The Supreme Court in Jones V. Alfred H. Mayer Co. 392 U.S. 409 (1

